

**Montana Department of Commerce
Housing Assistance Bureau**

**2003
Reprinting of:**

**Montana Residential Landlord and Tenant Act of
1977
(M.C.A. 70-24 & 25)**

and

**Illegal Housing Discrimination
(M.C.A. 49-2 & 4)**

Including Amendments from the 2003 Legislative Session

This document is provided as a reference tool for landlords and tenants, and contains only those sections of the state law that apply to rental housing.

History and Cross References provided in formal legal text are not provided, to save on printing costs.

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MCA 2003 TITLE 70 CHAPTER 24
RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

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Part 1

General Provisions

70-24-101. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

70-24-102. Purposes -- liberal construction to promote. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

- (a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and
- (b) encourage landlords and tenants to maintain and improve the quality of housing.

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may

include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of:

(i) the dwelling unit or the building of which it is a part; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(8) "Mobile home park" means a trailer court as defined in 50-52-101.

(9) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(11) "Person" includes an individual or organization.

(12) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to the landlord under the rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(16) "Single-family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(17) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, including all housing provided by the Montana university system and other postsecondary institutions;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges, along with the use of the dwelling unit.

70-24-105. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

70-24-106. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

70-24-107. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

70-24-108. What constitutes notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the person at the place held out by the person as the place for receipt of the communication or, in the absence of a designation, to the person's last-known address. If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made upon the date 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had

exercised reasonable diligence.

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Part 2

Rental Agreements

70-24-201. Rental agreement -- terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

- (a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;
- (b) rent is payable at the landlord's address;
- (c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;
- (d) rent is uniformly apportionable from day to day; and
- (e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

70-24-203. Agreement not to permit receipt of rent free of obligation. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 70-24-303.

70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

Part 3

Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at

or before the commencement of the tenancy the name and address of:

- (a) the person authorized to manage the premises; and
- (b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

- (a) service of process and receiving notices and demands; and
- (b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

70-24-302. Landlord to deliver possession of dwelling unit. (1) At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

70-24-303. Landlord to maintain premises -- agreement that tenant perform duties - limitation of landlord's liability for failure of smoke detector. (1) A landlord:

- (a) shall comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

- (b) may not knowingly allow any tenant or other person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

- (i) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;
 - (ii) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or
 - (iii) gang-related activities, as prohibited by Title 45, chapter 8, part 4;

- (c) shall make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

- (d) shall keep all common areas of the premises in a clean and safe condition;

- (e) shall maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

- (f) shall, unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

- (g) shall supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant;

and

(h) shall install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under the landlord's control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(h), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(f) and (1)(g) and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection (1)(h).

70-24-304. Transfer of premises or termination of management -- relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to chapter 25 of this title and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

70-24-305. Transfer of premises by tenant. (1) A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot space has the

exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

70-24-306 through 70-24-310 reserved.

70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

- (a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;
- (b) it is reasonably related to the purpose for which it is adopted;
- (c) it applies to all occupants in the premises in a fair manner;
- (d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;
- (e) it is not for the purpose of evading the obligations of the landlord; and
- (f) the tenant has notice of it at the time that the tenant enters into the rental agreement or when it is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of the tenant's bargain, it is not valid until 7 days after written notice to the tenant in the case of a week to week tenancy or 30 days' written notice in the case of tenancies from month to month.

70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

- (a) pursuant to court order;
- (b) as permitted by 70-24-425 and 70-24-426(2); or
- (c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter.

70-24-313. Mobile home parks -- park rules. (1) A mobile home park landlord may adopt a rule concerning the rental occupancy of a mobile home space and the use of common areas and facilities in accordance with 70-24-311. A rule may not be unreasonable, and a rule that does not apply uniformly to all mobile home residents of a similar class creates a rebuttable presumption, as defined in 70-24-431, that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

70-24-314. Resident associations -- meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenant association.

(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living.

70-24-315. Mobile home park landlord's road maintenance obligations. In addition to the obligations imposed by 70-24-303, the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

70-24-316 through 70-24-320 reserved.

70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner, that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises, including the living room, bedroom, kitchen, bathroom, and dining room, in a reasonable manner, considering the purposes for which they were designed and intended. This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(3) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed

or that neighboring tenants may be injured by any of the following:

- (a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;
- (b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or
- (c) gang-related activities, as prohibited by Title 45, chapter 8, part 4.

70-24-322. Tenant to occupy as dwelling unit only -- extended absence. (1) Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

Part 4 Remedies

70-24-401. Administration of remedies -- enforcement. (1) The remedies provided by this chapter must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

70-24-402. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

70-24-403. Prohibited provision in rental agreement -- unenforceability -- damages. (1) A provision prohibited by 70-24-202 included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

70-24-404. Unconscionability -- court discretion to refuse enforcement. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

70-24-405. Failure of landlord to deliver possession -- tenant's remedies. (1) If the

landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

70-24-406. Failure of landlord to maintain premises -- tenant's remedies. (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by the tenant, a member of the tenant's family, or other persons on the premises with the tenant's consent.

(b) make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

70-24-407. Damages for minor violations by landlord. If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2).

70-24-408. Purposeful or negligent failure to provide essential services -- tenant's

remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

70-24-409. Fire or casualty damage -- rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

70-24-410. Unlawful or unreasonable entry by landlord -- tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

70-24-411. Unlawful ouster, exclusion, or diminution of service -- tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid

rent.

70-24-412 through 70-24-420 reserved.

70-24-421. Action for nonpayment of rent -- tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or

destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(7) Subsections (3) through (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.

(8) The landlord is not bound by this section in the event that:

(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and

(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441.

70-24-423. Waiver of landlord's right to terminate for breach. Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right. The acceptance of partial payment of rent due does not constitute a waiver of any right.

70-24-424. Refusal of access -- landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-24-312(5), the landlord may either obtain injunctive relief or terminate the rental agreement.

70-24-425. Failure of tenant to maintain dwelling -- landlord's right to enter and repair. If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

70-24-426. Remedies for absence or abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

70-24-427. Landlord's remedies after termination -- action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under 70-24-321(3), the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing.

70-24-428. Landlord's recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

70-24-429. Holdover remedies -- consent to continued occupancy -- tenant's response to service in action for possession. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably

believes that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-601 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes.

70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or

threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union, mobile home park tenant association, or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

70-24-432. Disposition of abandoned mobile home occupying a mobile home park space. (1) If a tenancy terminates and the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home park space and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the mobile home from the premises.

(2) If the landlord moves the mobile home from the premises, the landlord shall store the mobile home in a place of safekeeping and shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner a reasonable removal and storage charge.

(3) If the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the removal and storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity found by the landlord to have an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home under subsection (4).

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile

home from storage and does not do so within 20 days after delivery of the owner's response, the mobile home is conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or
(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord may deduct from the proceeds of a sale the reasonable costs of removal, storage, notice, and sale and any delinquent rent or damages owing on the premises and shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

70-24-433 through 70-24-435 reserved.

70-24-436. Mobile home parks -- grounds for termination of rental agreement. (1)

With respect to a tenant who rents space in a mobile home park but does not rent the mobile home, if there is a noncompliance by the tenant with the rental agreement or with a provision of 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon a date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a mobile home park rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any resident of the mobile home park or its manager or owner, for which the notice period is 14 days;

(c) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for the final late payment is 30 days;

(e) a violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park, its manager, or its owner, whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 12-month period of the same rule for which notice

has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of 70-24-321(1) within a 12-month period, for which the notice period for the final violation is 14 days;

(h) any violation of 70-24-321(2), for which the notice period is as provided in 70-24-422(3);

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

(j) any other noncompliance or violation not covered by subsection (1)(a) through (1)(i) that endangers other residents or mobile home park personnel or causes substantial damage to the mobile home park premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1), provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land comprising the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

70-24-437 through 70-24-440 reserved.

70-24-441. Termination by landlord or tenant -- applicability. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home.

70-24-442. Attorney fees -- costs. (1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

MCA 2003 TITLE 70 CHAPTER 25
RESIDENTIAL TENANTS' SECURITY DEPOSITS

Part 1 -- General Provisions

- 70-25-101. Definitions.
- 70-25-102. Application of chapter.
- 70-25-103. Waivers and contrary provisions invalid.

Part 2 -- Rights and Duties

- 70-25-201. Security deposit -- deductions authorized therefrom.
- 70-25-202. List of damages and refund -- delivery to departing tenant.
- 70-25-203. Failure to provide list -- forfeiture of deduction rights.
- 70-25-204. Wrongful withholding of security deposit -- action.
- 70-25-205. Failure of departing tenant to furnish new address.
- 70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

Part 1
General Provisions

70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit.

70-25-102. Application of chapter. This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

Part 2

Rights and Duties

70-25-201. Security deposit -- deductions authorized therefrom. (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses, including a reasonable charge for the landlord's labor.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

70-25-202. List of damages and refund -- delivery to departing tenant. (1) Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, with regard to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of the list must be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery must be accomplished by mailing the list and refund to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

(2) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days by mailing it to the new address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

(3) It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the last-known address of a tenant who has departed and the tenant does not receive the funds because the tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant for the amount due the tenant.

70-25-203. Failure to provide list -- forfeiture of deduction rights. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

70-25-204. Wrongful withholding of security deposit -- action. (1) A person who wrongfully withholds a residential property security deposit or any portion of the deposit is liable in damages to the tenant in a civil action for an amount equal to the sum determined to have been wrongfully withheld or deducted. The attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises is on the landlord.

(2) An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or the landlord's agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant.

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with a new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, does not bar the tenant from recovering the amount owing to the tenant by the landlord.

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or the landlord's agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating the fact; and

(c) the signature of the landlord or the landlord's agent.

(3) A person engaged in the rental of property for residential purposes who fails to furnish a tenant, in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement is barred from recovering any sum for damage to or cleaning of the leasehold premises unless the person can establish by clear and

convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

**MCA 2003 TITLE 49
HUMAN RIGHTS**

**CHAPTER 2
ILLEGAL DISCRIMINATION**

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Part 1 General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.
- (2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.
- (3) "Commission" means the commission for human rights provided for in 2-15-1706.
- (4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.
- (8) "Department" means the department of labor and industry provided for in 2-15-1701.
- (14) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.
- (17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.
 - (b) The term does not include a labor organization.
- (18) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.
- (19) (a) "Physical or mental disability" means:
 - (i) a physical or mental impairment that substantially limits one or more of a person's major life activities;
 - (ii) a record of such an impairment; or
 - (iii) a condition regarded as such an impairment.
- (b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not

a reasonable accommodation.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

Part 2

Commission for Human Rights

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than \$50.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter in question before the commission.

(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, for examination, of books, papers, or other intangible evidence.

(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).

(4) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

49-2-204. Rules. (1) The commission shall adopt procedural and substantive rules necessary to implement the commission's responsibilities under this chapter. Rulemaking procedures must comply with the requirements of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt the procedural provisions of Title 46 as it considers appropriate.

(2) The department shall adopt procedural and substantive rules necessary to implement the department's responsibilities under this chapter. Rules adopted under this chapter must comply with the Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505, the department shall adopt all applicable portions of the Montana Rules of

Civil Procedure and the Montana Rules of Evidence.

49-2-205. Purpose. It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the staff operate under the direction and control of the commissioner. The staff is not independent of the commissioner. It is the intent of the legislature that the commission and the department not favor, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination in Montana. The commission and the department shall maintain the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in Montana. It is not the intent of the legislature that the department be prohibited from dismissing matters, from referring matters to other agencies following an initial inquiry and interview, or from reaching a decision in an investigation or contested case hearing.

49-2-206 through 49-2-209 reserved.

49-2-210. Enforcement. (1) When a possible violation of this chapter comes to the attention of the department, the commissioner may initiate a complaint on behalf of the department. The complaint must be signed by the commissioner.

(2) A person is not subject to penalties under this chapter if compliance with the provisions of this chapter would cause the person to violate the provisions of another state law.

Part 3

Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

49-2-305. Discrimination in housing -- exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national

origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or
(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

Part 4

Exceptions to Prohibitions

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) through (5) and 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

Part 5

Enforcement

49-2-501. Filing complaints. (1) A complaint may be filed with the department by any party claiming to be aggrieved by any discriminatory practice prohibited by this chapter.

(2) A complaint may be filed on behalf of a party claiming to be aggrieved by a discriminatory practice prohibited by this chapter if the person acting on behalf of the aggrieved party is the aggrieved party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

(3) The complaint must be in the form of a written, verified complaint stating the name and address of the party, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(4) (a) Except as provided in 49-2-510 and subsection (4)(b) of this section, a complaint under this chapter must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure

concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth in this section may not be considered by the commission or the department.

49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of the commissioner or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

49-2-504. Informal investigation and conciliation. (1) (a) The department shall informally investigate the matters set out in the complaint promptly and impartially. If the department determines that the allegations are supported by a preponderance of the evidence, it shall attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, identified in the investigation. The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(b) If a complaint is filed relative to an employment-related complaint and if the commissioner decides that the inclusion of documents or information contained in the complaint would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information contained in the complaint. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(2) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

(3) The department shall commence proceedings within 30 days after receipt of a complaint.

(4) The department shall make a finding regarding the merit or nonmerit of the complaint within 180 days after a complaint is filed, except that the department shall make the finding within 120 days after a complaint is filed under 49-2-305.

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the department shall hold a hearing on the complaint. The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) (a) If the parties mutually agree to permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds 12 months after the complaint was filed, then the parties shall stipulate to a schedule for proceedings to be established by the department.

(b) The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case.

(c) The case must be heard no later than 90 days after the date is set by the department. The department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.

(3) (a) The hearing must be held by the department in the county where the unlawful conduct is alleged to have occurred unless a party charged in the complaint requests and is granted a change of venue for good cause shown. The case in support of the complaint may be presented before the department by the complainant or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the applicable portions of the Montana Rules of Civil Procedure as adopted by the department.

(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.

(4) A party may appeal a decision of the hearings officer to the commission. A party shall provide notice of its appeal to the commission, the department, and all parties within 10 business days of receipt of the notice of decision of the administrative hearing. The commission shall hear all appeals within 120 days of receipt of notice of appeal. The commission shall render a decision within 90 days of hearing the appeal.

(5) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.

(6) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(7) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may allow the prevailing party reasonable attorney fees. An action under this section must comply with the Montana Rules of Civil Procedure.

49-2-506. Procedure upon a finding of discrimination. (1) If the commission or the department, after a hearing, finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission or the department shall order the party to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of punitive damages.

(3) Whenever a commission or department order or conciliation agreement requires inspection by the department for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 1 year.

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

49-2-508. Enforcement of commission or department order or conciliation agreement. If the order issued under 49-2-506 is not obeyed, the commissioner or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's or department's order by any appropriate order. The commissioner or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement.

49-2-509. Conclusion of complaint -- filing in district court. (1) Except as provided in subsection (2), the department shall, at the request of either party, conclude the administrative proceedings if:

(a) the department has completed its investigation of a complaint filed pursuant to 49-2-305; or

(b) 12 months have elapsed since the complaint was filed.

(2) The department may not refuse to conclude the administrative proceedings unless:

(a) the party requesting the conclusion of the administrative proceedings has waived the right to request filing in the district court;

(b) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the department fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(c) the party requesting conclusion of the administrative proceedings has unsuccessfully attempted through court litigation to prevent the department from investigating the complaint.

(3) The department shall dismiss a complaint filed under this chapter and the complainant may file a discrimination action in district court if:

(a) the commission or the department lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the investigation of the complaint or fails to keep the department advised of changes of address;

(c) the department determines that the allegations of the complaint are not supported by a preponderance of the evidence; or

(d) the department determines that the commission or the department will not or cannot hold a hearing within 12 months after the filing of the complaint.

(4) A decision of the department to dismiss a complaint brought under this chapter or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on the party. The commission shall review the decision in informal proceedings under 2-4-604. A party may ask the district court to review a decision of the commission made under this section. The review must be de novo.

(5) Within 90 days after receipt of a notice under subsection (1) or (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may commence a civil action in the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the complainant fails to commence a civil action in the district court within 90 days after receipt of the letter, notice, or order issued by the commission or the department, the claim is barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.

49-2-510. Procedures and remedies for enforcement of housing discrimination laws.

(1) A complaint may be filed with the department by or on behalf of a party claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form, verified by the aggrieved party, and must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the department, on appeal, or the commission, in a hearing under 49-2-505, finds that a party against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the department or the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(a) in an amount not exceeding \$10,000 if the respondent has not been adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

(b) in an amount not exceeding \$25,000 if the respondent has been adjudged in any prior judicial or formal administrative proceedings to have committed one or more similar discriminatory housing practices in repeated violation of a subsection of 49-2-305 during the 5-year period ending on the date of the filing of the written complaint.

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is affirmed send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency.

(4) (a) When a complaint is filed under 49-2-305, a complainant or a respondent may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the department and to all complainants and other respondents named in the complaint. Within 30 days after the election is made, the complainant, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the

department may intervene in the action.

(b) The department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved party may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved party may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the department, except as provided in subsection (5)(d). If the department has obtained a conciliation agreement with the consent of the aggrieved party, an action may not be filed under this subsection by the aggrieved party regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission or the department may not continue administrative proceedings on a complaint after the filing of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved party may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission or the department has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant and the respondent; or
(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the party is financially unable to bear the costs of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.

(6) If the court finds that a party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of a subsection of 49-2-305, the court may, consistent with the provisions of subsection (2), award punitive damages. The court may also award attorney fees to the substantively prevailing party.

(7) (a) Except as provided in subsection (7)(b), all civil and administrative penalties and other revenue generated under this part must be deposited in the state general fund.

(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution,

either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

49-2-602. Intimidation or interference in right to be free from housing discrimination -- penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because the citizen is or has been, or in order to discourage that citizen or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

CHAPTER 4

RIGHTS OF PERSONS WITH DISABILITIES

Part 2 -- Rights of the Physically Disabled

49-4-201. Repealed.

49-4-202. Policy of the state.

49-4-203. Definitions.

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations.

49-4-212. Access to housing accommodations.

- 49-4-213. Use of white or metallic-colored canes restricted to the blind.
- 49-4-214. Right to be accompanied by service animal -- identification for service animals in training.
- 49-4-215. Penalty for violating rights.
- 49-4-216. Duty and civil liability of pedestrian or driver approaching blind person.
- 49-4-217. Penalty for violation of duty or unauthorized use of cane.

Part 5 -- Interpreters for the Deaf in Official Proceedings

- 49-4-501. Policy.
- 49-4-502. Definitions.
- 49-4-503. Deaf person as participant in judicial or administrative proceeding -- interpreter to be used.
- 49-4-504. Preliminary determination.
- 49-4-505. Intermediary interpreter to be used.
- 49-4-506. Interpreter in full view.
- 49-4-507. Coordination of interpreter requests.
- 49-4-508. Oath of interpreter.
- 49-4-509. Compensation.
- 49-4-510. Waiver.
- 49-4-511. Privileged communications.

Part 2 Rights of the Physically Disabled

49-4-203. Definitions. (1) "Housing accommodation" means any real property or portion of real property that is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. The term does not include any single-family residence the occupants of which furnish for compensation not more than one room within the residence.

(2) "Service animal" means a dog or other animal individually trained to provide assistance to an individual with a disability.

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

49-4-212. Access to housing accommodations. Blind, visually impaired, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

49-4-214. Right to be accompanied by service animal -- identification for service animals in training. (1) A person with a disability has the right to be accompanied by a service animal or a service animal in training with identification complying with subsection (4) in any of the places mentioned in 49-4-211(2) without being charged extra for the service animal. The person with a disability is liable for any damage done to the property by the animal.

(2) A person with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. The person with a disability may not be required to pay extra compensation for the service animal but is liable for any damage done to the premises by the service animal.

(3) A person who is training a service animal is entitled to the same rights and assumes the same responsibilities granted to a person with a disability in this section.

(4) For the purposes of this section, a service animal in training that is a dog shall wear a leash, collar, cape, harness, or backpack that identifies in writing that the dog is a service animal in training. Other service animals in training must also be identifiable by written identification as a service animal in training. The written identification for service animals in training must be visible and legible from a distance of at least 20 feet.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

Part 5

Interpreters for the Deaf in Official Proceedings

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Intermediary interpreter" means a knowledgeable deaf person who, because of the person's intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(5) "Qualified interpreter" means an interpreter listed by the department of public health and human services as provided in 49-4-507.

49-4-503. Deaf person as participant in judicial or administrative proceeding -- interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of public health and human services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of public health and human services with a list of qualified and available interpreters.

(3) The only function of the department of public health and human services is to maintain the list referred to in subsection (2).

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.